

AMENDED IN ASSEMBLY JUNE 30, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 797

Introduced by Senator Romero
(Coauthor: Assembly Member Leno)

February 22, 2005

An act to amend Section 11357 of the Health and Safety Code, and to amend Section 23222 of the Vehicle Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 797, as amended, Romero. Crimes: marijuana: possession: penalty.

Existing law provides that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor, punishable by a fine of not more than \$100.

This bill would instead provide that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is, for the first offense, guilty of *either* an infraction, subject to specified procedural provisions *and punishable by a fine not to exceed \$100*, or a misdemeanor, punishable by a fine not to exceed \$250, and is, for the 2nd or any subsequent offense, guilty of a misdemeanor punishable by a fine not to exceed \$250. The bill would make conforming changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11357 of the Health and Safety Code is amended to read:

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both that fine and imprisonment, or shall be punished by imprisonment in the state prison.

(b) (1) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is, for the first offense, guilty of ~~an infraction~~ *either an infraction punishable by a fine not to exceed one hundred dollars (\$100) or a misdemeanor punishable by a fine not to exceed two hundred fifty dollars (\$250)*, and is, for the second or subsequent offense, guilty of a misdemeanor punishable by a fine not to exceed two hundred fifty dollars (\$250). A first offense shall be subject to the provisions of subdivision (d) of Section 17 of the Penal Code. The fact of a prior conviction shall be alleged in the accusatory pleading.

(2) Notwithstanding other provisions of law, if that person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of Sections 1000 to 1000.5, inclusive, of the Penal Code shall apply to the matter. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, the person shall be released by the arresting officer upon presenting satisfactory evidence of identity and giving a written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more

1 than five hundred dollars (\$500), or by both that fine and
2 imprisonment.

3 (d) Except as authorized by law, every person 18 years of age
4 or over who possesses not more than 28.5 grams of marijuana,
5 other than concentrated cannabis, upon the grounds of, or within,
6 any school providing instruction in kindergarten or any of grades
7 1 through 12 during hours the school is open for classes or
8 school-related programs is guilty of a misdemeanor and shall be
9 punished by a fine of not more than five hundred dollars (\$500),
10 or by imprisonment in the county jail for a period of not more
11 than 10 days, or both.

12 (e) Except as authorized by law, every person under the age
13 of 18 who possesses not more than 28.5 grams of marijuana,
14 other than concentrated cannabis, upon the grounds of, or within,
15 any school providing instruction in kindergarten or any of grades
16 1 through 12 during hours the school is open for classes or
17 school-related programs is guilty of a misdemeanor and shall be
18 subject to the following dispositions:

19 (1) A fine of not more than two hundred fifty dollars (\$250),
20 upon a finding that a first offense has been committed.

21 (2) A fine of not more than five hundred dollars (\$500), or
22 commitment to a juvenile hall, ranch, camp, forestry camp, or
23 secure juvenile home for a period of not more than 10 days, or
24 both, upon a finding that a second or subsequent offense has been
25 committed.

26 SEC. 2. Section 23222 of the Vehicle Code is amended to
27 read:

28 23222. (a) No person shall have in his or her possession on
29 his or her person, while driving a motor vehicle upon a highway
30 or on lands, as described in subdivision (b) of Section 23220, any
31 bottle, can, or other receptacle, containing any alcoholic beverage
32 which has been opened, or a seal broken, or the contents of
33 which have been partially removed.

34 (b) (1) Except as authorized by law, every person who
35 possesses, while driving a motor vehicle upon a highway or on
36 lands, as described in subdivision (b) of Section 23220, not more
37 than 28.5 grams of marijuana, other than concentrated cannabis
38 as defined by Section 11006.5 of the Health and Safety Code, is,
39 for a first offense, guilty of ~~an infraction~~ *either an infraction*
40 *punishable by a fine not to exceed one hundred dollars (\$100) or*

1 a misdemeanor punishable by a fine of not more than two
2 hundred fifty dollars (\$250), and is, for the second or any
3 subsequent offense, guilty of a misdemeanor punishable by a fine
4 not to exceed two hundred fifty dollars (\$250). A first offense
5 shall be subject to the provisions of subdivision (d) of Section 17
6 of the Penal Code. The fact of a prior conviction shall be alleged
7 in the accusatory pleading.

8 (2) Notwithstanding any other provision of law, if the person
9 has been previously convicted three or more times of an offense
10 described in this subdivision during the two-year period
11 immediately preceding the date of commission of the violation to
12 be charged, the previous convictions shall also be charged in the
13 accusatory pleading

14 and, if found to be true by the jury upon a jury trial or by the
15 court upon a court trial or if admitted by the person, the
16 provisions of Sections 1000 to 1000.5, inclusive, of the Penal
17 Code shall apply to the matter.

18 (4) In any case in which a person is arrested for a violation of
19 this subdivision and does not demand to be taken before a
20 magistrate, the person shall be released by the arresting officer
21 upon presentation of satisfactory evidence of identity and giving
22 his or her written promise to appear in court, as provided in
23 Section 40500, and shall not be subjected to booking.